

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL SIMS,

Plaintiff,

v.

MARK J FERKO *et al.*,

Defendants.

Case No. C06-5490RJB

REPORT AND
RECOMMENDATION

NOTED FOR:
November 3rd, 2006

This 42 U.S.C. § 1983 action has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636 (b) and local Rules MJR 3 and 4. When the court received the plaintiff's application to proceed *in forma pauperis* the clerk's office noted several defects and sent a letter outlining the deficiencies to plaintiff. Plaintiff has corrected some, but not all of the defects. The court still needs a six month prison account statement and copies of the complaint.

INTRODUCTION AND SUMMARY CONCLUSION

Plaintiff was given until September 28th to cure the defects in his application. He has failed to do so. Accordingly, the court recommends plaintiff's application be **DENIED** and he be required to pay the three hundred and fifty dollar, \$350.00, filing fee. The court notes that failure to provide

1 service copies may result in dismissal of this action even if the fee is paid.

2 FACTS

3 The court gave plaintiff until September 28th, 2006 to cure deficiencies. He has not provided
4 a six month accounting of financial transactions or copies of the complaint for service. Further, the
5 court specifically warned petitioner that failure to comply may result in dismissal. (Dkt. # 2).

6 DISCUSSION

7 Plaintiff has not complied with the letter from the clerk's office. The Prison Litigation
8 Reform Act requires a prisoner submit an accounting of their financial transactions for the last six
9 months when they apply to proceed *in form pauperis*. 28 U. S. C. 1915 (a)(2). In addition plaintiff
10 has not provided copies of his complaint for service. The court recommends the application to
11 proceed *in forma pauperis* be **DENIED**. Plaintiff should be given thirty days to pay the full three
12 hundred and fifty dollar, \$350.00, filing fee and provide service copies of the complaint or this
13 action should be **DISMISSED WITHOUT PREJUDICE**. A proposed order accompanies this
14 Report and Recommendation.

15 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the
16 parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed.
17 R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of
18 appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule
19 72(b), the clerk is directed to set the matter for consideration on **November 3rd, 2006**, as noted in
20 the caption.

21
22 Dated this 13th day of October, 2006.

23 /S/ J. Kelley Arnold
24 J. Kelley Arnold
25 United States Magistrate Judge
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